IN THE HIGH COURT FOR THE STATES OF PUNJUAB AND HARYANA AT CHANDIGARH

CRL.R.NO.659 of 1992

DATE OF ORDER:18.9.2007

Baldev Singh and others ....Petitioners

Versus

State of Punjab ....Respondent

CORAM: HON'BLE MR. JUSTICE A.N. JINDAL

Present: Mr.Sandeep Mann, Advocate, for the petitioners.

Mr. A.S. Brar, D.A.G. Punjab.

A.N. JINDAL,J.

This revision petition is directed against the judgment dated 24.9.1992 passed by Additional Sessions Judge, Rup Nagar, dismissing the appeal of the petitioners against judgment dated 24.10.1991, passed by the learned Chief Judicial Magistrate, Ropar, convicting the accused-petitioners and one Nika Singh(since expired during the pendency of the trial) under Sections 120-B IPC, 467, 468, 471 and 420 read with Section 120-B IPC and sentencing them as under:

Ajmer Singh, Baldev Singh, and Nikka Singh		
U/s 120-B IPC	:	To undergo RI for a period of 1 ½ years and to pay a fine of Rs. 500/-each.
Ajmer Singh and Baldev Singh		
U/s 471 IPC	:	To undergo imprisonment for 1 ½ years and to pay a fine of Rs. 500/-each.
U/s 420 read with Section 120-B IPC	:	To undergo RI for a period of 1 ½ years and to pay a fine of Rs. 500/-each.
U/s 468 read with Section 120-B IPC	:	To undergo RI for a period of 1 ½ years and to pay a fine of Rs. 500/-each.

Baldev Singh, Ajmer Singh, Nikka Singh Bhag Singh and Sucha Singh

U/s 467 read with Section 120-B IPC	:	To undergo RI for a period of 1 ½ years and to pay a fine of Rs. 500/- each.

However, all the sentences were ordered to run concurrently.

Briefly stated the facts of the case are that as per the Jamabandi for the year 1968-69, the mohitmim Giana Nand Chela Brahma Nand was in possession of 217 Kanals 11 marlas on behalf of Shivdwala over the land of Shivdwala, Mataur. In the year 1973-74, Sham Bharti chela Nathu Ram had become the Mohitmim. Thereafter, the land of the Shivdwala was acquired by the Punjab Government vide Awards Nos. 2,3 and 5 for a sum of Rs. 170680.50, Rs. 190003.13 and Rs. 62847.50, respectively in favour of the Shivdwala village Mataur. Consequently, two cheques numbers 297758 and 297759 were issued on 9.3.1977 and another cheque No. 297760 was issued on 14.3.1977 in favour of Shivdwala through Baba Vaid Nath. However, these cheques were received by Ajmer Singh, Jawala Singh (since deceased) and Baldev Singh as special attorney of Baba Vaid Nath and the amount was disbursed through State Bank of India Sector-17 Chandigarh. This amount was deposited by Ajmer Singh, Jawala Singh and Baldev Singh in their personal accounts Nos. 6421, 6424 and 6432 respectively. As a matter of fact, Raghbans Singh lambardar prepared a forged agreement dated 1.11.1976, removing Sham Bharti from the office of mohitmim and appointing Baba Vaid Nath as mohitmim, who legally could not be appointed and thereafter the aforesaid three accused got issued the cheques representing themselves to be the agents of Baba Vaid Nath. But it was done in order to usurp the amount of the compensation. Thus, the aforesaid embezzlement was committed by the accused-petitioners with intention to usurp the amount in their favour by depositing the cheques in their accounts. Thereafter, Bhag Singh and Sucha Singh petitioners facilitated the aforesaid three petitioners to get deposit the said amount of embezzlement in their own accounts.

Sham Bharti issued a telegram to Land Acquisition Officer, Industries Department, to the effect that the amount of the awards be not disbursed as the accused-petitioners were not entitled to receive the payment but Dial Singh, Land Acquisition Officer in connivance with

Raghbans Singh, Jawala Singh, Ajmer Singh, Baldev Singh and others disbursed the amount of the awards through cheques on the basis of forged agreement and power of attroney. The amount of Rs. 190003.13 was deposited by Jawala Singh in his account and the same was withdrawn on 3.4.1977 and deposited Rs. 180000/- in account No. 2049 with State Bank of India SAS Nagar, Mohali. Out of the amount of Rs. 170680.50 Ajmer Singh withdrew Rs. 70,000/- on 9.3.1977. On 7.4.1977, he withdrew the remaining amount and deposited the same in account No. 2050 of his brother Bhag Singh at State Bank of India, Mohali. Out of the amount, Rs. 62847.50 deposited in the name of Baldev Singh, he withdrew Rs. 25,000/- on 14.3.1977. On 7.4.1977, he withdrew Rs. 37840/- and deposited in account No. 2048 of Sucha Singh in State Bank of India, Mohali. The amount was neither deposited by Baldev Singh, Jawala Singh and Ajmer Singh in the account of Shivdwala nor it was used for the benefit of said institution. There are also allegations against Bhag Singh and Sucha Singh that they conspired with the accused in misappropriating the amount. On these allegations, the case was registered against the petitioners. Investigation was commenced. On completion of investigation report under Section 173 Cr.P.C. was presented against them. Earlier the trial Court convicted the petitioners but in the appeal Additional Sessions Judge, Ropar, remitted the case back to the Court of Chief Judicial Magistrate, Ropar.

After remand of the case, accused were charge-sheeted under Sections 467,468,463,120-B, 411 and 420 IPC to which they pleaded not guilty and claimed trial.

The prosecution, in support of its case, examined Subhash Chander Accountant, New Bank of India ,PW1 , Branch Office, Burail, Ved Warat, Manager, New Bank of India, PW2, Gurbinder Singh, AOK, Kharar, PW3, Narsingh Dass Kaungo, PW4, Mohinder Singh, PW5, Nasib Singh PW6, Hazara Singh, PW7, Surat Singh, PW8, Krishan Dass, PW9, Shiv Parshad Sarpanch, PW10, Surjan Singh, PW11, Baba Sham Bharti, PW12, Baba Vaid Nath, PW13, Sarja Singh PW14, Santokh Singh PW15, Hakam Ram PW16, D.K. Prashar PW17, Rajinder Kumar PW18, Nasib Singh PW19, Balbir Singh, Joint Registrar, Punjab and Haryana High Court, PW20, Swarn Singh, PW21, Harbhajan Singh PW22, Piara Singh PW23,

Sohan Singh PW24 and Kirpal Singh Ex-accountant PW25.

When examined under Section 313 Cr.P.C., they denied the allegations. While admitting that earlier Giana Nand was Mohtmim and thereafter Sham Bharti became Mohtmim and that land owned by Shivdwala was acquired and cheques were issued in favour of Shivdawala but they stated the cheques were issued through Baba Vaid nath. Accused Baldev Singh admitted having deposited Rs. 62,847.50 in New Bank of India, Chandigarh, but he alleged that he had given that amount to Baba Vaid Nath against a receipt and nothing was given to Sucha Singh. Sucha Singh admitted that the amount was withdrawn by Baldev Singh and deposited in his account No. 2048 in the New Bank of India, Mohali. His plea is that later on Baldev Singh withdrew the amount and gave it to Vaid Nath. Ajmer singh accused admitted that the amount of Rs. 1,70,680/- was deposited in his account. He denied that he withdrew Rs. 70,000/- on 9.3.1977 and denied that he deposited Rs. 80,000/- in the account of his brother Bhag Singh. He alleged that he gave the amount to Vaid Nath. Bhag Singh did not specifically deny the deposit of amount of Rs. 80,000/-, which was deposited by Jawala Singh in his account. All the accused alleged that amount was paid to Vaid Nath and denied all other allegations. They did not produce any evidence in defence.

Ultimately the trial ended in conviction. The appeal was also dismissed. Hence, this petition.

Admittedly, Shivdwala of village Mataur was the owner in possession of the land measuring 217 Kanal and 11 Marlas through the Mohtmim Giana Nand Chela Brahma Nand. Thereafter, Sham Bharti became Mohtmim. There is also no dispute with the fact that the land of the Shivdwala was acquired by the Punjab Government vide Awards Nos. 2,3 and 5 dated 16.4.1975, which are Ex. PW 5/A to 5/C. The case of the complainant is that the petitioners removed Sham Bharti by way of an agreement dated 1.11.1976 Ex. PW12/7, who had succeeded as Mohtmim in place of Giana Nand Chela brahma Nand and Baba Vaid Nath was appointed in his place and then petitioners got issued the cheques from the Land Acquisition Officer in their names through Baba Vaid Nath payable to Shivdwala. Still, instead of depositing the said cheques, they got deposited the same in their own accounts. The prosecution has amply established that

no customary proceedings or legal formalities came into being for removal of the Chela namely Sham Bharti and appointment of Baba Vaid Nath. Therefore, Baba Vaid Nath had no right to authorize the accused Baldev Singh, Ajmer Singh and Nikka Singh, to receive the cheques from the Land Acquisition Officer. It is also established that the accused Baldev Singh, Ajmer Singh and Nikka Singh, received the cheques from the Land Acquisition Officer unauthorizedly. No doubt, the proceedings against Land Acquistion Officer were quashed by the High Court vide order dated 7.2.1995, probably for the reasons that he acted in his official capacity and paid compensation to the duly authorised people, who managed the temple. There may be no allegations to fix the criminal liability on the Land Acquisition Officer which impelled this court to quash the proceedings qua him, but here the criminal liability of the petitioners is that they had received the cheques on behalf of the Shivdwala and admittedly instead of depositing the same in the account of Shivdwala deposited the same in their own accounts. Ajmer Singh having withdrawn the amount of Rs. 1,70,680/- and depositing the same in his personal account. He denied having withdrawn Rs. 70,000/- and Rs.100690-50P. But this fact stands established from the statement of account of Ajmer Singh Ex. PE9/C. Bhag Singh accused had admitted that Rs.80,000/- were deposited in account No.2050 by Ajmer Singh. Similarly, it is established that Jawala Singh (since deceased) received Rs.190003.13P and deposited the same in his account, which is clear from the statement of account Ex. PW1/C. The statement further shows that the said amount was withdrawn by Jawala Singh in April 1977. It is also admitted that Rs. 1,80,000/- were deposited by Jawala Singh in account No. 2049 with State Bank of India Mohali in the name of Nikka Singh. It is also established from the statement of Subash Chand PW1, Accountant of New bank of India Burail and Ved Barat Manager of the said Bank PW2 that Baldev Singh, Ajmer Singh and Jawala Singh withdrew the amount from the bank by forging power of attorney with the connivance of Baba Vaid Nath and deposited the same in the name of Nikka Singh, Bhag Singh and Sucha Singh.

The plea raised by Baldev Singh, Ajmer Singh and Jawala Singh petitioners is that the amount received by them had been returned to Baba Vaid Nath is of no consequence as Baba Vaid Nath was not the

competent person to receive the said amount of Shivdwala. He was also not authorised to execute power of attorney in favour of these petitioners. The amount could only be deposited with the authorised signatories of the Dera or in the account of the Dera.

Having examined the judgments of both the Courts below, the same are found to be well-reasoned and no such illegality or infirmity has been detected or pointed out which may be sufficient to disturb the same. The petitioners did not even spare the idle and embazelled the amount in his name after preparing fictitious agreement as well the power attorney and mis-appropriated the amount to their own use. As such, they do not deserve any leniency even on the quantum of sentence.

Consequently, finding no merit in the revision petition, the same is hereby dismissed.

18.9.2007 (A.N. JINDAL)
rajeev JUDGE

To be referred to reporter : Yes/no